

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA . Criminal No. 1:18mj196
 .
vs. . Alexandria, Virginia
 . June 7, 2019
GEORGE AREF NADER, . 2:12 p.m.
 .
Defendant. .
 .
.

TRANSCRIPT OF DETENTION HEARING
BEFORE THE HONORABLE IVAN D. DAVIS
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 P R O C E E D I N G S

2 (Defendant present.)

3 THE CLERK: United States v. George Nader, Case
4 No. 18mj196.

5 MR. PRABHU: Good afternoon, Your Honor. Jay Prabhu
6 and Laura Fong for the United States.

7 THE COURT: Good afternoon.

8 MR. CLARK: Good afternoon, Your Honor. Chris Clark
9 from Latham & Watkins. With me is my colleague, Tim McCarten.
10 We appreciate you accommodating us today.

11 THE COURT: Good afternoon.

12 This matter is before the Court for a detention
13 hearing. Are the parties ready to proceed?

14 MR. CLARK: The defendant is ready, Your Honor.

15 MR. PRABHU: Yes, Your Honor.

16 THE COURT: All right, just to ensure that the Court
17 received a courtesy copy of a supplemental memorandum in
18 support of the original emergency motion to release Mr. Nader
19 conditionally. Did the government receive a copy of that as
20 well?

21 MR. PRABHU: We received one electronically, yes,
22 Your Honor.

23 THE COURT: And you've had an opportunity to review
24 that?

25 MR. PRABHU: Yes, Your Honor.

1 THE COURT: All right.

2 MR. PRABHU: May I proceed?

3 THE COURT: You may.

4 MR. PRABHU: Your Honor, this is a presumption case,
5 as the Court recognized yesterday, but the facts and
6 circumstances associated with this particular defendant
7 actually go way beyond the situations that this Court typically
8 observes. The defendant is an extreme danger to the community
9 and risk of flight.

10 If the government may proffer for the Court?

11 THE COURT: Counsel.

12 MR. CLARK: I'd agree to a proffer within the
13 confines of the complaint and the defendant's criminal history
14 report, but if there's anything beyond that, it hasn't been
15 raised with me by counsel. I asked him whether he was going to
16 have a witness, and he said yes yesterday and no today.

17 So I'm happy to talk to him about the extent of what
18 the proffer is going to be. I certainly have no objection to
19 what's in the papers, Your Honor.

20 THE COURT: We knew we were here for a detention
21 hearing today. Did we not feel it necessary to discuss the
22 probability that both parties may be offering information by
23 proffer and whether or not that was acceptable to the other
24 party so we wouldn't have to deal with this issue in court?

25 MR. CLARK: No one raised it with me, Your Honor.

1 MR. PRABHU: Your Honor, yesterday I said we were
2 preparing to proceed by proffer but it would be up to the
3 Court, and today, as they asked to bring a witness, I said
4 proffers would be acceptable.

5 THE COURT: All right. Well, you've heard the
6 parameters of what he believes is an acceptable proffer. Does
7 the information you wish to proffer to the Court go beyond
8 those parameters?

9 MR. PRABHU: There are some items, yes. With
10 specific respect, Probation in their report indicates a
11 dismissed charge. That is one of the things that I was going
12 to address.

13 MR. CLARK: No objection.

14 THE COURT: Not his criminal history.

15 MR. CLARK: No objection, Your Honor.

16 MR. PRABHU: Yes. So criminal history both overseas
17 and in the United States is what the proffer would be.

18 MR. CLARK: Your Honor, I strenuously object to the
19 offer of information of any alleged criminal history of the
20 defendant overseas. The government has completely wrong
21 information about that. I raised that to them yesterday. I
22 said I was going to cross a witness on it, and I asked them for
23 any discovery they had with regard to that yesterday.

24 They told me they didn't have it, and if they want to
25 raise this issue by which they're wrong by proffer, it's highly

1 improper. If they've got any piece of evidence, I would like
2 to look at it right now, and I'll be happy to tell the Court
3 whether I'll accept it, but I have a feeling I know what this
4 is, and it's false.

5 That's my -- that's my concern, Your Honor.

6 THE COURT: Well, that's your belief.

7 MR. CLARK: I have the documents, Your Honor.

8 THE COURT: No one knows the truth, the validity or
9 the invalidity of the information except the individuals
10 involved, which would be neither one of these counsel.

11 MR. CLARK: That's correct, Your Honor, but I have
12 the court documents.

13 THE COURT: Well, then if you have court documents
14 that would suggest that the information that's being proffered
15 is not true, then offer them at the appropriate time. Why do
16 we need a witness?

17 MR. CLARK: I don't think the, the government should
18 be proffering information that's incorrect, but, Your Honor --

19 THE COURT: Well, this is a detention hearing.
20 Hearsay is acceptable. The rules of evidence don't apply.

21 MR. CLARK: I understand that, Your Honor.

22 THE COURT: You may be seated.

23 You may continue.

24 MR. PRABHU: Thank you, Your Honor. George Nader is
25 a dual citizen of the United States and Lebanon. He has an

1 extensive history of travel overseas, has resided overseas for
2 extended periods of time and deep and numerous connections to
3 overseas entities, but let me first address his criminal
4 history.

5 The incident charged against him is that he traveled
6 from overseas on January 2018. He brought a cellular telephone
7 into Washington Dulles International Airport, which is in the
8 Eastern District of Virginia, and that phone was found to
9 contain alleged images of child pornography.

10 I'm sure the Court has read the complaint in the case
11 which describes in general terms the illicit nature of the
12 materials involved and the seriousness of the charge. Two
13 points the government would make about the videos that are
14 charged in the complaint: Some of the videos alleged in the
15 complaint were actually sent by Mr. Nader to another party, and
16 the alleged child pornography videos that he received were sent
17 from more than one other individual. So it wasn't just him and
18 one person. It was him and multiple people sharing these
19 videos back and forth that were found on his phone.

20 The current charge is exacerbated by the fact that
21 this is not the first time Mr. Nader has been accused of
22 bringing child pornography into the United States. In July
23 1990, the defendant arrived at Dulles with two reels of film
24 containing child pornography concealed in candy tins. He was
25 indicted in the Eastern District of Virginia and pled guilty to

1 knowing transportation of child pornography in 1991. That is
2 the same charge that he was arrested for on Monday of this
3 week.

4 As the Court is well aware, a second offense of
5 violating 18 U.S.C. 2251(a) is now punishable by a mandatory 15
6 years in prison, and this is a clear reason for a 60-year-old
7 man to flee the jurisdiction, if not the country, but these are
8 not Mr. Nader's only interactions with law enforcement about
9 sexually explicit material involving minors. In fact, the
10 first occurred in 1984, 35 years ago.

11 Early in 1984, U.S. Customs intercepted an envelope
12 address to J. Nader in Washington, D.C., mailed from Amsterdam.
13 That envelope contained a spool of 8 millimeter film and four
14 magazines which included images of minor boys engaged in sex
15 acts. There were also two magazines in the envelope where
16 minor boys were nude.

17 George Nader was charged with importing obscene
18 material at the time. The search warrants used to review the
19 materials were challenged in D.C. District Court. The court
20 found that the warrants were general warrants and threw the
21 evidence of Mr. Nader receiving the sexually explicit material
22 involving minors out, and the charges were dropped. If the
23 Court wishes to review the D.C. District Court's opinion, it is
24 621 F. Supp. 1076.

25 This is relevant again because it shows the 35-year

1 history of George Nader's interest in child pornography, and
2 this interest continued at least until early 2018, when he left
3 the United States.

4 But again, that's not the end of the story. The
5 government has received documents from the Czech Republic.
6 Mr. Nader was indicted by Czech authorities with commercial sex
7 with at least ten minor boys between 1999 and 2002. He was
8 arrested by Czech authorities in 2002.

9 According to the documents provided to the U.S.
10 government, Mr. Nader's indictment indicated that he offered
11 food or small or bigger gifts, usually clothes, mobile phones,
12 and even jewels, to the minor boys. For each meeting in which
13 sexual activity took place, the indictment claims Mr. Nader
14 gave victims 2,000 Czech crowns, which we understand is worth
15 about 50 to 60 dollars.

16 George Nader was also accused of paying money to men
17 who provided the boys, and according to the documents we
18 received, the defendant was convicted and was given a year in
19 prison.

20 But again, the story doesn't stop there. One of the
21 Czech child prostitutes that claimed he had sex with George
22 Nader gave a statement to the Czech authorities at that time
23 which has also been provided to the United States. The witness
24 stated that George Nader transported him, a 14-year-old boy, to
25 the United States in 2000, and he used the boy in sexually

1 explicit conduct.

2 The boy confirmed this statement to the Federal
3 Bureau of Investigation in 2018, after Mr. Nader was charged in
4 this court. The government has been able to corroborate the
5 travel plans of the 14-year-old boy, the fact that this child
6 prostitute's visa was arranged by Mr. Nader, and notably, the
7 boy testified that George Nader told him not to tell anyone
8 about what happened and threatened him and his mother in the
9 Czech Republic if he did.

10 This is consistent with the story of another child
11 that interacted with Mr. Nader that was interviewed by law
12 enforcement in 2002. This boy stated that in 1997, when he was
13 14, George Nader transported him to the United States, and he
14 stayed at Mr. Nader's residence. In 2002, the young man told
15 the FBI that he had watched at least one child pornography
16 video with George Nader at his residence in Washington, D.C.

17 As a result of that investigation, the FBI obtained a
18 search warrant at that time for George Nader's storage unit in
19 Washington, D.C. In that storage unit in 2002, the FBI located
20 numerous copies of alleged child pornography in Mr. Nader's
21 storage unit. Because Mr. Nader was not in the country at the
22 time and apparently remained overseas for an extended period,
23 no charges were filed, and eventually the alleged child
24 pornography was destroyed.

25 So that's the criminal context, Your Honor. I think

1 given the history as both someone interested in child
2 pornography and having hands-on contact with more than a dozen
3 minor boys over 35 years, Mr. Nader is an extreme risk to the
4 community and has every incentive to flee.

5 The government has obtained evidence that Mr. Nader
6 has travel and/or identity documents for more than one country.
7 As I said, he's a citizen of Lebanon and the United States. He
8 has a villa in the United Arab Emirates and identity documents
9 associated with that country. He has a chalet in Lebanon,
10 which one of the minor boys testified -- who was interviewed
11 said he was brought to.

12 With respect to Mr. Nader's net worth, I believe,
13 though the government hasn't seen a transcript, Mr. Clark
14 conceded that he has a net worth of at least \$3 million in the
15 prior detention hearing. For its part, the government has
16 obtained evidence that he had cyber currency worth at least
17 \$1 million and other properties in the United States and
18 abroad.

19 Mr. Nader has extensive foreign contacts. A phone
20 seized from his possession in January 2018 contained contacts
21 for His Royal Highness Mohammed bin Zayed, MBZ, the Crown
22 Prince of the UAE. It had a contact for a representative of
23 Mohammed bin Salman, the Crown Prince of Saudi Arabia, numerous
24 members of the Saudi royal family; ambassadors to various
25 countries, including Russia, Qatar, and the UAE; and phone

1 numbers for private security firms. The FBI has obtained
2 numerous media reports demonstrating extensive apparent
3 contacts between George Nader and foreign governments and
4 entities.

5 There's some matters we discussed at the bench
6 yesterday that can be addressed by the facilities at issue.
7 Nothing in the submissions of the defendant overcomes the
8 presumption of detention.

9 Thank you, Your Honor.

10 THE COURT: Thank you.

11 MR. CLARK: Your Honor, I'm going to renew my
12 objection to that proffer of triple hearsay, nameless
13 accusations, but let me go through the real facts of what the
14 government just tried to make sound as dramatic and damaging as
15 possible without regard to the true facts.

16 So 35 years ago, Mr. Nader was arrested and charged
17 with an offense. As an initial matter, Mr. Nader was bailed.
18 Mr. Nader appeared at every proceeding. Mr. Nader wasn't
19 accused of any violations pending that proceeding, and the case
20 was dismissed against Mr. Nader.

21 There's no probative value to that, but what it shows
22 is when accused of an offense, Mr. Nader doesn't flee. There's
23 nothing different about Mr. Nader then than now with regard to
24 his nationality, citizenship, international travel,
25 international connections, assets, and residences. He had all

1 of the factors the government has just said are exacerbating
2 factors with regard to his dual citizenship, his travel
3 documents, his residences, his assets, the people that he
4 knows. All of that was true in 1984. 1984, Your Honor, 35
5 years ago. Mr. Nader appeared, prevailed, and never violated
6 while he was pending a case.

7 That shows that he's not a flight risk. That shows
8 that he's not a danger to the community. But let's talk
9 further --

10 THE COURT: Besides the difference that what is
11 different between then and 2019 is he's 60 years old, facing a
12 mandatory minimum of 15 years in federal prison.

13 MR. CLARK: That is an issue, Your Honor, and that's
14 why we're going to address it with a different --

15 THE COURT: As long as we recognize that.

16 MR. CLARK: I'm sorry, Your Honor?

17 THE COURT: As long as we recognize that.

18 MR. CLARK: We do, Your Honor. We do, and that's why
19 we have a far, far different bail package proposed here than
20 was imposed in 1984 or that, indeed, was imposed in the offense
21 that he did take responsibility for.

22 So it's a very important -- the government has, has
23 raised the issue of the 1990 case that happened in this
24 district, and it's important to recognize that it's the same
25 charge, and as Your Honor says, that's an exacerbating factor

1 for sentencing.

2 However, what's important to recognize is Mr. Nader
3 was bailed at that time, too, at first by Judge Bryan and then
4 by Judge Cacharis, who took over the case, and five different
5 times, his bail conditions were eased to allow him during the
6 pendency of that case, he was released immediately, but to
7 travel internationally first to Russia, then to Lebanon, and
8 then for there to be no international restrictions whatsoever.

9 And Mr. Nader, having traveled to Russia, which at
10 the time did not have an extradition treaty with the United
11 States, traveled to Lebanon, which the government here has said
12 is a place that he owns a residence, and we don't deny that.

13 At any one of those departures, he could have not
14 returned, Your Honor, facing the same charge, and he did every
15 time. And the reason is because George Nader considers himself
16 a citizen of the United States. He's always going to subject
17 himself to the United States justice system. He's not going to
18 ever flee, and he's not going to violate while on release, and
19 his conduct has shown that time and time again.

20 Now, his conduct in this case is incredibly
21 important. We gave you details of that in our submission, and
22 it's utterly ignored in what the government said, but it's
23 very, very important to understand Mr. Nader's conduct here.

24 Mr. Nader's phone was seized from him in January of
25 2018. The government has submitted to you, as they must, that

1 Mr. Nader knew there was prohibited conduct on that phone.
2 They not only have submitted it in the complaint, but learned
3 counsel has explained why based on evidence that's nowhere in
4 the complaint, but that apparently he sent some texts or
5 whatnot, that he knew there was content on that phone.

6 So in January of 2018, he knows the FBI has his
7 phone, and according to the government, he knows there's
8 prohibited content on that phone, and for good or for bad,
9 Mr. Nader's been through this process before, and Mr. Nader,
10 whatever the government submits about, well, he knows people in
11 the Middle East and he's got a home in Lebanon and he's got a
12 home in Abu Dhabi, he comes back to the United States four
13 times.

14 The government admits they knew about the, the
15 information on the phones while he was coming back and forth
16 from the Middle East to the United States, but if Mr. Nader was
17 a flight risk, and Mr. Nader knew the government had his
18 phones, which is undeniable, and Mr. Nader knew there was
19 content on the phones, which we deny but they submit, how is he
20 a flight risk?

21 He's coming back to this jurisdiction time and again.
22 Either he's innocent because he had no idea there was something
23 on his phone, or he's coming back to the United States because
24 he always comes back to the United States. That's what
25 happens.

1 There's -- actually every action both by Mr. Nader
2 and by the government in this case show he's not a flight risk,
3 because they didn't move for a year to apprehend him,
4 notwithstanding their knowledge that he came back and forth
5 into the United States to meet with the FBI. Again, Your
6 Honor, if he was going to flee and he knew the FBI had his
7 phone and he knew, according to them, that this information was
8 on it, wouldn't he have fled?

9 No, he came back and met with the FBI four times, and
10 then he came back again.

11 And Your Honor, Your Honor showed a little bit of,
12 you know, there was a gesture --

13 THE COURT: Counsel, I think a portion of this is why
14 you sought to put your supplemental memorandum under seal.

15 MR. CLARK: You're right, Your Honor, and I think I
16 want to address that in a minute, but I'm trying to address
17 some of the government's arguments first.

18 And I think the final issue is this Czech thing,
19 which it is -- there was a lot of allegation and not much
20 specificity. There were no names. There were no -- there
21 apparently are documents. Why weren't the documents proffered
22 to the Court? Why can't we see the documents? That was the
23 heart of my objection to begin with, Your Honor. If they've
24 got proof, they should proffer proof.

25 They don't -- there's no burden on the Court to give

1 them documents. We've certainly provided probably a fair
2 amount of documentation to this Court. Why can't the
3 government proffer?

4 The reason is because the allegation the
5 government --

6 THE COURT: If they provided the information, it
7 wouldn't be a proffer.

8 MR. CLARK: That's fair, Your Honor, but there's a
9 reason they proffered it and didn't provide the information,
10 and that is because the individual that they just in open court
11 said besmirched Mr. Nader's name, the young man named (name
12 stricken per order of Court), didn't testify in the Czech
13 Republic.

14 MR. PRABHU: Objection, Your Honor. He's talking
15 about the victim.

16 THE COURT: Sustained. Counsel, I understand your
17 obligation to represent your client competently, zealously, and
18 to the best of your interests or the best of your ability in
19 his best interests. There are rules --

20 MR. CLARK: I apologize, Your Honor.

21 THE COURT: -- by which these proceedings must go
22 forward.

23 Let's not forget them.

24 MR. CLARK: I very much apologize, Your Honor. The
25 difficulty here is --

1 THE COURT: The name of the individual pronounced by
2 counsel will be stricken from any transcript of these
3 recordings.

4 MR. CLARK: Thank you, Your Honor. My apologies to
5 the Court.

6 There is specificity here. There is a truth, and the
7 truth is that individual and that individual's mother did
8 provide evidence to the court in the Czech Republic, and
9 Mr. Nader was acquitted of the allegations that the government
10 has just proffered to the Court, and if they have the
11 documents, they knew that.

12 And, and I think it's prejudicial to my client, to
13 put it mildly, for them to proffer those facts and not
14 acknowledge the fact that the allegations were denied in open
15 court in the Czech Republic and rejected by the court.

16 THE COURT: So we knew that before coming in here.

17 MR. CLARK: Yes.

18 THE COURT: Do you have the documents that say he was
19 acquitted?

20 MR. CLARK: I do, Your Honor.

21 THE COURT: Then what's the problem?

22 MR. CLARK: The problem is that's why I asked the
23 government not to proffer the information that was incorrect.
24 We'll correct the record.

25 THE COURT: So we didn't sit down before coming in

1 court, counsel, and say: Okay, well, you want to proffer this.
2 Well, I don't believe your proffer will be accurate because I
3 have a document that says it's not.

4 And you handed that document to him, and he said:
5 Okay, you're right, so I won't say it. Or he looked at the
6 document and says: Okay, you're right, but I'm going to say it
7 anyway.

8 MR. CLARK: I did ask him to talk about it, and he
9 declined to talk about it, and that's why I raised it to the
10 Court at the beginning of the proceeding, Your Honor.

11 THE COURT: Then it serves no prejudice to your
12 client since you've now rebutted his proffer.

13 MR. CLARK: Thank you, Your Honor.

14 So what we have here is a defendant who has been
15 twice accused in the United States of these offenses, once
16 prevailed, once took responsibility, and at every turn has
17 appeared in court, has never violated his bail conditions once,
18 has never attempted to flee, and has never committed an offense
19 while on release. That's Mr. Nader's record as respects bail.

20 Now, Your Honor is correct there are, there are other
21 issues that we've raised here. One thing that I want to
22 address from the outset is as we've laid out, Mr. Nader has a
23 very, very serious health condition. There was discussion
24 yesterday about the idea that a doctor could see him at any
25 time in the facilities that he's held in. We --

1 THE COURT: I -- if that comment were made, I don't
2 recall it, but if it were made, I put nothing in it because the
3 United States Attorney's Office has no control over the
4 Alexandria Detention Center.

5 MR. CLARK: That's fair, Your Honor, and I don't
6 fault them for it, but the reality is a doctor can't get in to
7 see Mr. Nader, and we tried, and I --

8 THE COURT: When you prove to me that it's necessary,
9 you may have a better argument.

10 MR. CLARK: Your Honor, we've submitted the affidavit
11 of Dr. Hulse --

12 THE COURT: When you've proved to me it's necessary,
13 you may have a better argument.

14 MR. CLARK: Okay, Your Honor.

15 THE COURT: That would suggest that the Court is
16 telling you that what you've provided so far does not
17 accomplish that task.

18 MR. CLARK: Thank you, Your Honor.

19 At a bare minimum, it was certainly a suggestion in
20 the papers that Mr. Nader needed to be seen by a doctor
21 promptly. That was, in fact, the order of the court in
22 Brooklyn. At the end of the proceeding, Judge Pollak said: I
23 think we need to enter a bond that basically specifies that,
24 and obviously, this is without prejudice to him --

25 THE COURT: And what steps have we taken since

1 yesterday to determine whether he could? Because the
2 information you've provided in your supplemental memorandum
3 informed the Court of the fact that he could not be seen
4 yesterday because he wasn't cleared. "Yesterday" and
5 "promptly" may be two different things.

6 I saw no information from medical professionals that
7 he said he needed to be seen yesterday. What steps have we
8 taken in conversations with the Alexandria Detention Center to
9 see whether or not arrangements could be made for him to see
10 medical personnel after yesterday?

11 MR. CLARK: We spoke to them -- we, we left messages
12 last night. We spoke to them today. We told them that we had
13 sent a doctor yesterday, that the doctor was turned away, could
14 the doctor see Mr. Nader today? The answer was no, and we have
15 not been able to arrange a doctor for the weekend.

16 THE COURT: Well, if asking a question doesn't get
17 you to what you want --

18 MR. CLARK: I understand that, Your Honor.

19 THE COURT: -- did you then follow it up with the
20 question of what do we need to do, what steps do we need to
21 take to give us a better chance of my client being seen by a
22 doctor?

23 MR. CLARK: Understood, Your Honor.

24 THE COURT: No, did you?

25 MR. CLARK: Yes. The nurses that we spoke to did not

1 have that information for us.

2 THE COURT: And?

3 MR. CLARK: And we'll get on the phone as soon as
4 we're out of the hearing again, Your Honor, to, to try to find
5 a way to get a doctor to Mr. Nader, but he had an urgent -- the
6 reason Mr. Nader flew here was for an appointment on Wednesday.

7 THE COURT: Well, I'm going to ask you one simple
8 question: What if Mr. Nader can't be seen at the Alexandria
9 Detention Center? There are procedures by which he can be
10 transferred to a hospital to be seen. What's the difference?

11 MR. CLARK: We, we would very much --

12 THE COURT: He doesn't have to be released under
13 those conditions.

14 MR. CLARK: He doesn't, Your Honor; I agree. So, I
15 mean, it -- as an initial matter, Your Honor, that would be our
16 application. We would like Mr. Nader to be evaluated, and
17 we're willing -- and again --

18 THE COURT: I don't think the government is objecting
19 to your client being evaluated if it's medically appropriate.

20 MR. PRABHU: That's correct, Your Honor.

21 MR. CLARK: Are they contesting that it is medically
22 appropriate, I guess, is the next question, Your Honor.

23 THE COURT: That's not a decision they need to make.

24 MR. CLARK: Okay. So, Your Honor, the, the doctors
25 in Germany required that Mr. Nader be examined no later than

1 this week. That's in the report. Dr. Hulse said that that's
2 what needs to happen.

3 We had an appointment with Dr. Shimony on Wednesday.
4 That obviously for reasons that Your Honor is very familiar
5 with could not take place. We then got an appointment, a
6 standing appointment with Dr. Hulse where he would make himself
7 available to evaluate Mr. Nader to see what the after-cardiac
8 care Mr. Nader requires is medically necessary, you know,
9 virtually at any time, but we haven't had anyone be able to
10 examine Mr. Nader to determine medical necessity, Your Honor.

11 Dr. Hulse had to give you his report based on our
12 information. No one's been able to see him.

13 THE COURT: Well, here's a question, because I found
14 it a little interesting when I looked at the declaration again
15 of Dr. Hulse that your client went through a procedure which
16 would seem to require follow-up and further evaluation by a
17 doctor or a specialist other than an anesthesiologist.

18 Dr. Hulse is an anesthesiologist. How does an
19 anesthesiologist understand what follow-up is necessary for the
20 condition and/or procedures that your client underwent?

21 MR. CLARK: It's, it's a fair question, Your Honor.
22 Dr. Hulse is the medical director of the Cardiac Aftercare
23 Center at the University of Virginia. He is trained as an
24 anesthesiologist, but his specialty is assessing these
25 situations, and he's the medical director of that institute.

1 And so it's a fair question. He is an
2 anesthesiologist, but this is what he does, and this is why we
3 wanted him to see Mr. Nader.

4 THE COURT: And who else did he communicate with and
5 consult with in coming to that conclusion? Because he
6 obviously thought it would be appropriate for him to consult
7 with others, even though that's his job to make the final
8 decision, to consult with those individuals who specialize in
9 the area of medicine upon which the client or the person he's
10 making the opinion has undergone --

11 MR. CLARK: I think --

12 THE COURT: -- since it's not his area of expertise.

13 MR. CLARK: I think it very much is his area of
14 expertise, Your Honor. He has done a fellowship at Johns
15 Hopkins University in cardio --

16 THE COURT: This is a cardio issue.

17 MR. CLARK: Yes.

18 THE COURT: An anesthesiologist is not an expert in
19 cardio issues.

20 MR. CLARK: Respectfully, Your Honor, again, he's
21 trained as an anesthesiologist, but he is the medical director
22 of the Cardiac Aftercare Center.

23 THE COURT: So it is your representation to the Court
24 that he consulted with no one else.

25 MR. CLARK: Your Honor, I believe that he used his

1 knowledge and experience in coming to his recommendation. Our
2 application and desire would be to have that doctor or any
3 other suitably qualified cardiac aftercare doctor examine
4 Mr. Nader so all of us could figure out what needs to be done.

5 There, there is no dispute that he had open heart
6 surgery.

7 THE COURT: We can move on from that. No one
8 disputes the fact that your client may need follow-up
9 evaluation.

10 MR. CLARK: Thank you, Your Honor. We've --

11 THE COURT: I don't think anyone contests the fact
12 that if you asked for it and it was capable of being provided,
13 then it would be.

14 MR. CLARK: Well, that's the problem, is we've been
15 asking for it since Monday and it hasn't been provided,
16 respectfully.

17 THE COURT: And you haven't given me any real
18 explanation on what steps were taken to acquire it except to
19 ask two nurses at the Alexandria Detention Center.

20 MR. CLARK: Your Honor, that's --

21 THE COURT: I didn't receive a motion for your client
22 to be transported to a hospital or to be transported to some
23 other cardio facility that could evaluate him, which would then
24 give the government an opportunity to provide its response to
25 said motion.

1 MR. CLARK: Respectfully, Your Honor --

2 THE COURT: Just for future reference --

3 MR. CLARK: Fair enough.

4 THE COURT: -- that's how things work in this Court
5 in the Eastern District of Virginia.

6 MR. CLARK: Your Honor --

7 THE COURT: We don't, we don't conduct business by
8 letter, telephone calls, conference calls. Anything you want
9 from the Court, you file a motion.

10 MR. CLARK: We have, Your Honor, and yesterday's
11 emergency motion for conditional release was an application
12 that Mr. Nader be released to the Inova Medical Center here in
13 Fairfax County so that he could be evaluated. That was the --
14 that was the subject matter of our motion.

15 THE COURT: Well, maybe you inartfully worded it.

16 MR. CLARK: I apologize if we did, Your Honor.

17 THE COURT: Maybe you should have worded it an
18 emergency motion to transport him. Because when you use the
19 word "release" prior to an initial appearance when we're going
20 to be discussing detention, it suggests something.

21 MR. CLARK: I apologize, Your Honor. If we did it
22 inartfully, it was not meant that way. It's our aim and desire
23 to get Mr. Nader medically evaluated by a competent authority.

24 We believe that the nearest competent authority are
25 the doctors at the Inova Fairfax Center. We've presented to

1 the Court both that application and a series of conditions that
2 Stroz Friedberg would put into place to get him there that, you
3 know, have been used in the *Madoff* case with an individual who
4 is facing --

5 THE COURT: Well, that's not what you asked for in
6 your supplemental memorandum. You asked for release
7 conditions, and one of those conditions is he live in a
8 long-term care facility. That's --

9 MR. CLARK: If necessary.

10 THE COURT: -- dramatically different than him being
11 transported to an Inova facility for an evaluation.

12 MR. CLARK: If necessary, Your Honor. So, I mean,
13 there -- presumably, an evaluation is going to come back with
14 what needs to be done about Mr. Nader's medical condition.
15 That's, that's our goal.

16 And it may be that he needs significant cardiac
17 aftercare, or it may be that he doesn't. If he needs
18 significant cardiac aftercare, which wouldn't be surprising
19 after triple bypass open heart surgery --

20 THE COURT: Well, this is a detention hearing.

21 MR. CLARK: Okay, Your Honor.

22 THE COURT: We're here to determine whether there are
23 a combination of conditions that would reasonably assure your
24 client's appearance at future court proceedings and the safety
25 of the community.

1 MR. CLARK: Yes, Your Honor.

2 THE COURT: Not whether he needs to be medically
3 evaluated.

4 MR. CLARK: Okay. Well, I'll address that then, Your
5 Honor. Mr. Nader, as the government has detailed, has been
6 called upon to appear in court dozens of times in the United
7 States, and he's always appeared. Your Honor is right, the
8 situation here is different from there because there's a
9 mandatory minimum sentence that he's facing, and we've proposed
10 to ensure his continued appearance the most restrictive set of
11 conditions conceivable and ones that have been employed in
12 cases with far higher potential sentences and that, indeed,
13 were, were levied on defendants and guaranteed their
14 appearance.

15 So Stroz Friedberg would post two round-the-clock
16 armed guards wherever Mr. Nader was staying. He would be, as
17 the statute requires, subject to --

18 THE COURT: And they would be paid by whom?

19 MR. PRABHU: Mr. Nader.

20 THE COURT: And if Mr. Nader stopped paying them,
21 they would go away.

22 MR. CLARK: He would be remanded.

23 THE COURT: No, they would just leave.

24 MR. CLARK: They would not, Your Honor.

25 THE COURT: And he would then be capable of simply

1 walking out of the facility.

2 MR. CLARK: To be clear, Your Honor, we would engage
3 Stroz Friedberg, Latham & Watkins, we would pay Stroz
4 Friedberg. Mr. Nader eventually pays our bill.

5 THE COURT: And since you will be paying them, they
6 will be obligated to do what you tell them to do.

7 MR. CLARK: That's not correct, Your Honor. In the
8 other cases and as I'm proffering to the Court right now, Stroz
9 Friedberg, who are all former federal law enforcement officers,
10 have a flight protocol that they adopt --

11 THE COURT: That will be pursuant to a contract that
12 would be executed between you and them.

13 MR. CLARK: And we would be happy for the Court to so
14 order it if it makes the Court -- so that we would be subject
15 and Stroz Friedberg would be subject to contempt or any other
16 penalties that would come, come about --

17 THE COURT: You know how the Court could order it?
18 Make them sign the paperwork as a third-party custodian. Then
19 they would be obligated to.

20 MR. CLARK: Your Honor, we don't object to that, and
21 we're happy to check with them about it, if that would give
22 Your Honor more confidence. This has been done --

23 THE COURT: It may give me more confidence in regards
24 to whether or not there are a combination of conditions of
25 release to reasonably assure his appearance, therefore,

1 possibly concluding that you may have rebutted the presumption
2 that there are not, and giving the benefit of the doubt to the
3 defendant, which I am required to do when in doubt, the doubt
4 lies in the defendant. That's one prong.

5 MR. CLARK: Yes, Your Honor.

6 THE COURT: Whether or not there are a combination of
7 conditions of release that would reasonably assure his
8 appearance at future court proceedings.

9 You mentioned in your argument concerning that prong
10 that every time he was placed on release, he didn't violate the
11 law. Well, we don't -- we're not clear about that because no
12 one has a crystal ball. We don't specifically know yet when
13 alleged child pornography was downloaded and transported and
14 distributed; but that aside, the Court in making its
15 determination of release of detention has to consider more than
16 just future appearance; it has to consider safety of the
17 community; and even though taking you at your word that he may
18 not have committed offenses while on pretrial release, having
19 been convicted before of the substantially identical offense
20 did not prevent him from allegedly committing it again.

21 So what information can you provide this Court that
22 would give it comfort to believe that you have overcome the
23 presumption that no combination of conditions of release will
24 reasonably assure the safety of the community, especially now
25 since the Court has heard not accusations, let's say we will

1 put those aside, he has a conviction for hands-on contact with
2 children, a conviction for child pornography, and he's facing a
3 mandatory minimum 15 years for possession of child pornography
4 now.

5 This seems like an individual who over the years, 40
6 years ago had a propensity, 40 years later still has it.

7 MR. CLARK: Your Honor --

8 THE COURT: That's a problem.

9 MR. CLARK: Understood. The -- first of all, Your
10 Honor, I take issue with the characterization of the conviction
11 in Prague and the characterization of the proffer of the
12 evidence in Prague.

13 THE COURT: What's the conviction for?

14 MR. CLARK: For contributing to the moral corruption
15 of society.

16 THE COURT: By doing what?

17 MR. CLARK: The, the conduct alleged was that --

18 THE COURT: No, the convict -- the conduct for which
19 he was convicted.

20 MR. CLARK: He pled guilty, Your Honor.

21 THE COURT: Even better.

22 MR. CLARK: Thank you, Your Honor. The conduct for
23 which he pled guilty was having a relationship with two young
24 men who were two years under the age of consent in
25 Czechoslovakia.

1 THE COURT: Sexual conduct.

2 MR. CLARK: Correct, Your Honor.

3 THE COURT: Sexual conduct with minors.

4 MR. CLARK: They were minors, Your Honor.

5 THE COURT: How was the characterization of me saying
6 hands-on contact with minors not accurate?

7 MR. CLARK: My apologies to the Court, Your Honor. I
8 meant the, the multiple characterizations of the government, I
9 thought that's what you were referring to, Your Honor. I was
10 not trying to contradict Your Honor. I apologize.

11 So it's, it's, it's obviously a fair question, Your
12 Honor, and there are two ways in which the proposed bail
13 package seems to eliminate the danger to the community that
14 Your Honor has proposed.

15 THE COURT: In the first conviction, was he placed on
16 supervision?

17 MR. CLARK: He was, Your Honor.

18 THE COURT: Was it a condition of his supervision not
19 to commit another federal, state, or local crime?

20 MR. CLARK: It was, Your Honor.

21 THE COURT: And he was -- pled guilty in the District
22 of Columbia -- in the Eastern District of Virginia.

23 MR. CLARK: That's correct, Your Honor.

24 THE COURT: Was he placed on supervision?

25 MR. CLARK: He was, Your Honor.

1 THE COURT: Was a condition of his supervision not to
2 commit another federal, state, or local crime?

3 MR. CLARK: It was, Your Honor.

4 THE COURT: And he's here for what, the allegation of
5 committing another federal crime.

6 MR. CLARK: That's right, Your Honor. The
7 supervision terminated, obviously.

8 THE COURT: So the evidence would tend to show that
9 your client has difficulty following court orders when it comes
10 to not committing federal, state, or local crimes, which is the
11 gravamen to the safety of the community prong of Title 18,
12 United States Code, Section 3142.

13 MR. CLARK: Understood, Your Honor. Now, to be
14 clear, the conviction was in 19- --

15 THE COURT: And to be clear, it's a presumption case.

16 MR. CLARK: Understood, Your Honor. So in 19- --

17 THE COURT: So your, your argument is you're
18 overcoming the presumption with two previous convictions
19 involving minors.

20 MR. CLARK: One conviction in the United States and
21 one conviction --

22 THE COURT: Two convictions involving minors.

23 MR. CLARK: Yes, Your Honor. And the manner in which
24 we propose to overcome that presumption is to have Mr. Nader
25 not permitted to visit with anyone but his attorneys, not to

1 have access to any means of electronic communication, not to
2 have access to a telephone, and so --

3 THE COURT: Besides not visiting with anyone besides
4 his attorneys, unless the conditions of release that apply to
5 these types of offenses have significantly changed, it probably
6 was a condition of his release when he was previously convicted
7 of possession of child pornography not to have utilization of
8 electronic means -- well, it may not have been because it's --

9 MR. CLARK: Yeah, it was a long time --

10 THE COURT: We may have not had the internet.

11 MR. CLARK: So I didn't want to get in a tit for tat
12 with the Court about it, but there was a conviction in 1990,
13 and his supervised release, I think, was five years, and so he
14 didn't -- he never violated his supervised release. He, he, he
15 completed his term of supervised release without a violation,
16 and at the time, that wasn't a standard condition of supervised
17 release, and so while Your Honor raises a fair point about the
18 concern that you appropriately have with regard to these
19 issues, it isn't evidence that Mr. Nader ever violated a court
20 order or something that he was required to do by a court.
21 It --

22 THE COURT: Just the law.

23 MR. CLARK: Allegedly now, Your Honor, the law.
24 Allegedly.

25 So --

1 THE COURT: Well, previously as well, not allegedly.

2 MR. CLARK: Admittedly. Admittedly in that 1990
3 incident, Your Honor.

4 THE COURT: And the previous case.

5 MR. CLARK: The previous case was a 1984 case that
6 was dismissed.

7 THE COURT: No, the previous conviction.

8 MR. CLARK: That would be the 1990 case in the
9 Eastern District of Virginia or --

10 THE COURT: No, the case --

11 MR. CLARK: That's after that, Your Honor.

12 THE COURT: Well, does it make a difference?

13 MR. CLARK: Your Honor, it does in the sense that --

14 THE COURT: So what you're telling me is he was
15 convicted of child pornography, which is possession of
16 pictures, and post-conviction and supervision and any period of
17 incarceration, the decision was to move further down the line
18 of inappropriate activity by now laying our hands on minors.

19 MR. CLARK: That's certainly not what I'm telling
20 Your Honor.

21 THE COURT: Well, that's -- if you want to do a
22 timeline, since you've corrected the Court, that's the
23 timeline.

24 MR. CLARK: Your Honor, my point is simply --

25 THE COURT: Is that the timeline?

1 MR. CLARK: That is the timeline, Your Honor.

2 My point is simply Mr. Nader's conditions of release
3 can be arranged such that there is no possibility of him
4 violating any order this Court would issue.

5 THE COURT: No condition can guarantee that. That is
6 why the statute doesn't require a guarantee. It only requires
7 the Court to be reasonably assured.

8 MR. CLARK: Fair enough, Your Honor. Thus far --

9 THE COURT: Don't take off more than you need to.

10 MR. CLARK: Thank you, Your Honor. I appreciate it
11 on a day like today.

12 The, the structure that has been employed by Stroz
13 Friedberg to have, call it high-risk inmates released and able
14 to get the treatment that they need has never resulted in
15 anyone not appearing to court, and it has never resulted in
16 anyone violating bail conditions, because the supervision and
17 the strictness are so extreme that he's only going to see the
18 guard, a doctor, and us.

19 He's not going to be able to communicate with the
20 outside world, he's not going to be able to access the
21 internet, he's not going to be able to get texts, and he's not
22 going to be able to telephone people.

23 And so Your Honor's concerns are well stated, and,
24 you know, you've made them clear, but those conditions can
25 ameliorate those concerns such that the Court can have a high

1 degree of confidence that Mr. Nader will not and cannot become
2 a danger to the community, and that's the point of a bail
3 hearing is are there conditions that we can put together, and
4 we've spent a tremendous amount of time and effort with people
5 who are very experienced in these areas in order to be able to
6 come to the Court and say this has been done before, it's been
7 done and ensured the appearance of a defendant in court, it's
8 been done and ensured the defendant didn't violate any of the
9 court's orders, and we have -- we have a defendant here -- and
10 if, you know, Your Honor, we'll keep proffering more medical
11 information until everyone is satisfied -- who has a very
12 serious medical condition that we don't want and I, and I know
13 the Court doesn't want to get worse in incarceration.

14 And so there are challenges here. There's no
15 question there are challenges here, but we as counsel and
16 Mr. Nader have taken them very seriously. We've tried to
17 address any loophole that there could be in these conditions,
18 and we, you know, we did -- to Your Honor's point, we did ask
19 the government whether they wanted to discuss with us our
20 proposal, any of the conditions of our proposal, any of the
21 aspects of our proposal, and they didn't.

22 So we don't have their input, but we have done this
23 before, Stroz Friedberg has done this before, and we can submit
24 to the Court that it's never not worked.

25 THE COURT: With an individual in the same

1 circumstances as your current client?

2 MR. CLARK: With an individual --

3 THE COURT: Charged with the same offense, with the
4 same criminal background?

5 MR. CLARK: There, there are certainly cases with
6 individuals with the same offense, with the same backgrounds,
7 with less restrictive conditions where there's been no
8 violation.

9 THE COURT: You're saying that this firm, you're
10 representing to the Court, has overseen an individual in
11 federal court facing federal charges with a 15-year mandatory
12 minimum accused of possession of child pornography, who has
13 been previously convicted of possession of child pornography,
14 and then subsequently convicted of an offense for which he has
15 had sexual contact with a minor? They have successfully
16 overseen that individual under those circumstances?

17 MR. CLARK: Not, not exactly those circumstances,
18 Your Honor.

19 THE COURT: I didn't think so.

20 MR. CLARK: But circumstances which --

21 THE COURT: Because I don't, in my years of
22 experience have yet to see one of those set of circumstances.

23 MR. CLARK: Well, Your Honor, I haven't -- I've heard
24 the government say a lot of things about Mr. Nader and his risk
25 factors. I haven't heard the government say in any respect why

1 this package wouldn't work.

2 There's no -- there's been no argument or submission
3 that Mr. Nader would be able to not come to court, would be
4 able to somehow escape, would be able to somehow flee, and --

5 THE COURT: You keep focusing on -- I'll give it to
6 you, the Court thinks there might be a combination of
7 conditions of release that could reasonably assure his
8 appearance at future court proceedings. This last 15 minutes
9 of this conversation has focused on something else.

10 MR. CLARK: Understood, Your Honor.

11 THE COURT: What have you provided that overcomes the
12 presumption that there are no combination of conditions of
13 release that would reasonably assure the safety of the
14 community except for your client being under the restrictions
15 of a private security firm?

16 MR. CLARK: Who we've, we've offered to have --

17 THE COURT: The question was besides that, what else
18 have you provided this Court that would show that you have
19 overcome the presumption that no combination of conditions of
20 release would reasonably assure the safety of the community
21 under these circumstances?

22 MR. CLARK: We've also offered the Court a bond in
23 the amount of a million dollars --

24 THE COURT: Money surely doesn't protect the
25 community.

1 MR. CLARK: -- to be, to be cosigned by three
2 responsible individuals.

3 THE COURT: Bonds generally are for purposes of
4 assuring appearance.

5 MR. CLARK: Well, but the moral suasion of
6 individuals, Your Honor --

7 THE COURT: Those individuals cannot make another
8 individual not commit a crime.

9 MR. CLARK: Your Honor --

10 THE COURT: Your security firm can't do that.
11 Experience shows people who are incarcerated in prison commit
12 crimes, incarcerated with the most secure facilities around.
13 Your client by your suggestion would be in a long-term medical
14 facility, with a guard outside and a guard inside.

15 That's not prison, and people commit crimes in
16 prison. People commit crimes in the Alexandria Detention
17 Center.

18 Once again, you're not required to guarantee, but you
19 have to give this Court a lot more than you've given it now
20 based on the presumption and your client's criminal history
21 than a private security firm.

22 MR. CLARK: Well, Your Honor, the, the offenses that
23 have been alleged in the United States have to do with --

24 THE COURT: What else do you have?

25 MR. CLARK: Your Honor, at this, at this point,

1 that's our, that's our bail proposal.

2 THE COURT: Thank you.

3 MR. CLARK: Thank you, Your Honor.

4 THE COURT: Anything further?

5 MR. PRABHU: Does the Court wish to hear anything
6 further from the government? I can address some of the points
7 that he raised if you like.

8 THE COURT: Well, it's your request for detention.
9 I'm not going to hold you back from doing whatever you believe
10 is appropriate to fulfill your obligations.

11 MR. PRABHU: Thank you, Your Honor. Just, just very
12 briefly, the witness that Mr. Clark talked about made
13 representations about the transportation to the United
14 States --

15 THE COURT: I'm not even --

16 MR. PRABHU: Okay.

17 THE COURT: You can set that aside.

18 MR. PRABHU: Well, we also want to put on the record
19 that Mr. Nader was seen by a physician on Monday, when he
20 arrived. It was a requirement of --

21 THE COURT: It's protocol.

22 MR. PRABHU: It's a requirement of the marshals that
23 the FBI take him to a hospital to get him certified. They did
24 that. He was certified. In fact, the doctor said: Don't
25 bring healthy people in here.

1 So the idea that he has seen no medical professionals
2 is wrong. We, we definitely have tried everything we can to
3 ensure Mr. Nader's health and are supportive of any measures at
4 ADC to make sure that that happens.

5 We don't think that because Mr. Nader has access to
6 massive resources, he should get a different situation than the
7 typical defendant. The cases that they're referring --

8 THE COURT: And that would not be the current state
9 of the law.

10 MR. PRABHU: Right. Thank you, Your Honor.

11 THE COURT: This matter is before the Court because
12 the government has requested detention of the defendant,
13 Mr. George Aref Nader, pretrial on the charge of transportation
14 of visual depictions of minors. As noted by government
15 counsel, this is a presumption case based on the allegation
16 itself. That means this Court is to presume that there are no
17 combination of conditions of release that would reasonably
18 assure the defendant's appearance at future court proceedings
19 and the safety of the community, which places the obligation to
20 rebut that presumption on the defense. The defense is required
21 then to produce information, if it so has such information, to
22 rebut the presumption.

23 The Court, as noted, believes they may have presented
24 sufficient enough information to rebut the presumption
25 concerning the risk of nonappearance. The Court's obligation

1 does not stop there.

2 The Court does not believe that defense has produced
3 sufficient enough information to rebut the presumption that
4 there are no combination of conditions of release that would
5 reasonably assure the safety of the community. As noted in
6 both proffers and arguments of counsel and statements by this
7 Court, Mr. Nader stands before the Court not for a charge for
8 which he had been convicted previously in the Eastern District
9 of Virginia but an enhanced charge.

10 It's the Court's understanding he was previously
11 convicted of possession of -- of possession of child
12 pornography. Transportation, well, he hasn't -- he's not
13 gotten any better, it appears. Thirty years ago,
14 transported -- pled guilty to transportation of child
15 pornography. Thirty-plus years later, he's alleged to have
16 transported child pornography.

17 And I did not see the allegations of child
18 pornography that he was convicted of 30-odd years ago, but I
19 would venture a guess that the allegations are a little more
20 onerous this time around, having reviewed the information
21 contained in the affidavit in support of the criminal
22 complaint.

23 And this allegation is subsequent to a conviction
24 for -- after a conviction for transportation of child
25 pornography. That did not deter Mr. Nader. He then was

1 convicted of an offense which involved sexual contact with
2 minors. Whatever conviction and punishment he received for
3 that did not deter him because it's alleged he's back to once
4 again transporting child pornography.

5 With the presumption in place and that criminal
6 history, this Court finds there are no combination of
7 conditions of release that would reasonably assure the safety
8 of the community. Mr. Nader will be detained prior to further
9 proceedings.

10 The Court understands counsel's concerns about your
11 client's medical health. The Court may not wholeheartedly
12 agree based on some of the submissions provided even by
13 Mr. Nader's counsel concerning his condition, but that's
14 neither here nor there. Mr. Nader is alleged to have committed
15 an offense for which there's a maximum imprisonment term.

16 There's no maximum -- no offense he's committed now
17 that if convicted, he is to suffer a penalty of death. Any
18 concerns about his health while being incarcerated, it's the
19 requirement and obligation of his counsel to bring those
20 concerns to the Court's attention via motion, and we will deal
21 with it in that due time.

22 He's remanded to the custody of the United States
23 Marshals pending further proceedings.

24 MR. PRABHU: Thank you, Your Honor.

25 MR. CLARK: Thank you, Your Honor.

1 (Which were all the proceedings
2 had at this time.)
3

3

4 CERTIFICATE OF THE TRANSCRIBER

5 I certify that the foregoing is a correct transcript from
6 the official electronic sound recording of the proceedings in
7 the above-entitled matter.
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/s/

Anneliese J. Thomson

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